

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
**SECOND APPEAL NO. 1343 OF 2004**

Janakpuri Co-operative Housing  
Society Limited. ... Appellant.

Versus

Nashik Municipal Corporation  
and another..... Respondents.

Mr.Umesh Mankapure for the Appellant.

Mr. R. V. More for Respondent No.1.

**CORAM : A. S. OKA, J.**

**DATED : 21ST APRIL, 2005.**

**P.C.:**

By order dated 24th February, 2005 the Appellant was permitted to make application to Respondent No.1 Corporation for seeking necessary permission and the said application was directed to be disposed of within the time stipulated by the said order. The Advocates appearing for the parties state that on 31st March, 2005 the said application for development permission has been rejected.

2. The learned Advocate appearing for the Appellant submitted that the Appellant had obtained building

permission and commencement certificate from the Respondent No.1 Corporation. He stated that when earlier application was made by the Appellant to the Respondent No.1 for grant of permission to start weigh bridge, the Respondent No.1 came out with the reply that there was no provision in the Development Control Rules to give permission for starting weigh bridge. He invited my attention to the submissions made before the Appellate Court, which reads thus:

"Shri Kotwal has also submitted further that no doubt the Building Bye-laws and D. C. Rules permit some portion in the residential area abutting to the road which is 12 meters in width, for commercial purpose, still, according to him the plaintiff ought to have obtained permission from the Corporation about it. Unless and until necessary permission is obtained, the said Weigh-Bridge and office thereon becomes unauthorised construction and hence he submitted that the officers of the defendant No.1 rightly took the action against the plaintiff by issuing that notice. He has further canvassed that there may not be any provision in D. C. Rules to grant

permission for Weigh-Bridge. But the plaintiff ought to have obtained the permission for conversion of the said premises partly for commercial purpose. Had it been the fact that it had obtained such permission then certainly the defendants had no locus standi to issue that notice."

3. Learned Advocate submitted that in view of the stand taken by the Respondent No.1 Corporation, a fresh application was made by the Appellant which could not have been rejected by the Respondent No.1. He submitted that in view of the order dated 31st March, 2005 the Appellant will have to avail of the remedy of preferring statutory appeal. He, therefore, submitted that Appellant be permitted to withdraw the Second Appeal with liberty to prefer an Appeal for challenging the order dated 31st March, 2005 passed by Respondent No.1. He submitted that to enable the Appellant to prefer Appeal and apply for necessary interim relief, the ad-interim relief granted by this Court be continued for reasonable time.

4. Shri More, learned Advocate appearing for Respondent No.1, did not dispute that the Appellant has a right of preferring appeal against the order

dated 31st March, 2005 and therefore he has no objection for adopting the course suggested by the Advocate for the Appellant.

5. In view of the submissions, I pass the following order:

6. Second Appeal is dismissed as withdrawn. Notwithstanding the withdrawal of the Second Appeal, it will be open for the Appellant to prefer an appeal for challenging the order dated 31st March, 2005 and pray for appropriate interim relief in the said appeal. As and when such appeal is filed, it will be open for the Appellant to point out to the Appellate Authority the stand taken by Respondent No.1 Corporation in the Appeal in the District Court.

7. The ad-interim order passed by this Court on 24th February, 2005 will continue to operate for a period of eight weeks to enable the Appellant to obtain appropriate interim relief from the Appellate Authority.

8. All contentions of the parties in the Appeal which may be preferred by the Appellant are kept open.

9. Parties and the concerned authorities to act on the authenticated copy of this order.

Sd/-

(A. S. OKA, J. )

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION NO. 1812 OF 2004**

**IN**

**SECOND APPEAL NO. 1343 OF 2005**

Janakpuri Co-operative Housing  
Society Limited. ... Appellant.

Versus

Nashik Municipal Corporation  
and another..... Respondents.

Mr.Umesh Mankapure for the Appellant.

Mr. R. V. More for Respondent No.1.

**CORAM : A. S. OKA, J.**

**DATED : 21ST APRIL, 2005.**

**P.C.:**

In view of the disposal of the Second Appeal, this civil application does not survive. Hence rejected.

Sd/-

(A. S. OKA, J.)